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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

AARON GEORGE ZEEMAN,	)	CV 14-00328 RSWL
Plaintiff,	)	
v.	)	<b>ORDER re: DEFENDANTS'</b>
	)	<b>MOTION TO DISMISS</b>
UNITED STATES DISTRICT	)	<b>PURSUANT TO FED. R. CIV.</b>
COURT DISTRICT OF HAWAII	)	<b>P. 12 [42]</b>
PROBATION OFFICE, et al.,	)	
Defendants.	)	

Currently before the Court is Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(B) ("Motion") [42]. The present Motion arises from an action brought by Plaintiff Aaron George Zeeman ("Plaintiff") against Defendant United States District Court District of Hawaii Probation Office ("Probation Office"), and various Probation Office employees, Defendants Felix S. Mata ("Mata"), Johnathan K. Skedelski ("Skedelski"), and Keola Jenkins ("Jenkins") (collectively, "Defendants"). Plaintiff alleges violations to his constitutional rights and other violations of federal law stemming from Plaintiff's probation conditions.

1 I. BACKGROUND

2 A. Factual Background

3 On June 18, 2014, Plaintiff entered a guilty plea  
4 to four counts of Distribution of Marijuana, in  
5 violation of 21 U.S.C. §§ 841(a)(1) and 941(b)(1)(D),  
6 before the Honorable Leslie E. Kobayashi ("Judge  
7 Kobayashi") of the United States District Court,  
8 District of Hawaii. See Judgment in Criminal Case in  
9 the matter of U.S. v. Aaron George Zeeman, dated  
10 7/18/2014, Defs.' Mot. to Dismiss ("Mot.") Ex. A.  
11 (hereinafter "July 18 Judgment"), ECF No. 42-3.  
12 Plaintiff was sentenced to two years of probation for  
13 each of the four counts, to run concurrently. Id. at  
14 p. 3.

15 As a general condition of probation, Judge  
16 Kobayashi ordered in pertinent part:

17 That the defendant shall not unlawfully possess a  
18 controlled substance. The defendant shall refrain  
19 from any unlawful use of a controlled substance.  
20 The defendant shall submit to one drug test within  
21 15 days of commencement on supervision and at least  
22 two periodic drug tests thereafter, but not more  
23 than 8 valid drug tests per month during the term  
24 of probation. Id.

25 Additionally, as Special Condition No. 3 of  
26 Plaintiff's probation, Judge Kobayashi ordered:

27 The defendant is prohibited from using marijuana,  
28 synthetic marijuana, any products containing

1       tetrahydrocannabinol (THC), or any other products  
2       derived from a marijuana plant, including for  
3       medicinal or business purposes, without the prior  
4       approval of the Probation Office. Id. at p. 4.

5       Plaintiff alleges in his AC that "[a]t all times  
6 relevant herein, Plaintiff was under a Medical Doctor's  
7 care for his debilitating medical condition (Parasitic  
8 Meningitis), which includes neuropathy and chronic  
9 pain." AC ¶ 15, ECF No. 38. Plaintiff further alleges  
10 that, at all relevant times, he held a valid  
11 prescription for Cesament, Marinol<sup>1</sup>, and Medical  
12 Cannabis from a "Medical Doctor" to manage his pain, as  
13 well as a valid Hawaii Medical Marijuana Certification.  
14 Id. at ¶¶ 17-19.

15       Plaintiff alleges that Defendants would not consent  
16 to Plaintiff's use of marijuana or Marinol during his  
17 period of probation, as is required by Special  
18 Instruction No. 3. Plaintiff alleges that the  
19 Defendants' decision to withhold consent for Plaintiff  
20 to use Marinol or medical marijuana violates his  
21 constitutional rights under the Fourth Amendment, Fifth  
22 Amendment, Eighth Amendment, and Fourteenth Amendment.  
23 Plaintiff further alleges that Defendants' withholding  
24 of consent constituted discrimination in violation of  
25 the Americans with Disabilities Act of 1990 ("ADA"),  
26

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27       <sup>1</sup>Marinol is a synthetic prescription drug which contains  
28 THC, the active ingredient in marijuana. Raich v. Gonzales, 500  
F.3d 850, 871 n. 2 (9th Cir. 2007)(dissenting opinion).

1 breach of privacy under the Health Insurance  
2 Portability and Accountability Act ("HIPPA"), fraud,  
3 unlawful detention, and a breach of Defendants' oath of  
4 office. Plaintiff seeks compensatory and punitive  
5 damages, as well as injunctive relief ordering the  
6 Defendants to authorize the use of Marinol and medical  
7 marijuana wherever prescribed, and requiring the  
8 Department of Justice and Probation to "cease and  
9 desist arrests and/or prosecutions of probations or  
10 defendants on 'pre-trial' use, possession, growing or  
11 sales of state legally sanctioned medical marijuana  
12 when such law exists and is current." AC ¶¶ 8, 11,  
13 142.

14 On October 20, 2014, in Plaintiff's criminal case,  
15 Judge Kobayashi conducted a hearing to adjudicate  
16 certain violations of Plaintiff's probation conditions,  
17 in particular, Plaintiff's use of marijuana and Marinol  
18 in June, July, and August 2014. See Judgment in  
19 Criminal Case in the matter of U.S. v. Aaron George  
20 Zeeman, dated 10/20/2014, Declaration of Michael F.  
21 Albanese ("Albanese Decl.") Ex. A. (hereinafter  
22 "October 20 Judgment"), ECF No. 42-3. At this hearing,  
23 Plaintiff admitted guilt to nine violations of his  
24 probation conditions, seven of which included  
25 violations of Special Condition No. 3, the specific  
26 prohibition against the use of marijuana and other  
27 products containing THC. Id. at p. 2. As a result of  
28 Plaintiff's admission of guilt, Judge Kobayashi re-

1 sentenced Plaintiff to three months of incarceration  
2 for each of the four original felony counts, to be  
3 served consecutively, for a total of twelve (12) months  
4 incarceration. Id. at p. 3.

5 **B. Procedural Background**

6 Plaintiff filed his Complaint on July 22, 2014.  
7 See Compl., ECF No. 1. Defendants filed an Answer to  
8 the original Complaint on January 22, 2015, and filed a  
9 motion for judgment on the pleadings pursuant to  
10 Federal Rules of Civil Procedure Rule 12(c). Before  
11 that motion could be decided, Plaintiff requested an  
12 extension of time to file an amended complaint until  
13 September 24, 2015. The Court granted Plaintiff's  
14 request on May 13, 2015, and the pending motion for  
15 judgment on the pleadings was rendered moot [34]. On  
16 September 24, 2015, Plaintiff filed his AC. Defendants  
17 now file the instant Motion, seeking dismissal of  
18 Plaintiff's AC with prejudice.

19 **II. DISCUSSION**

20 **A. Legal Standards**

21 1. Motion to Dismiss Pursuant to FRCP 12(b)(1) -  
22 Lack of Subject Matter Jurisdiction

23 Article III of the United States Constitution  
24 requires a case or controversy in order for federal  
25 courts to have subject matter jurisdiction. U.S.  
26 Const. Art. 3, § 2. Federal Rule of Civil Procedure  
27 12(b)(1) authorizes a court to dismiss claims over  
28 which it lacks proper subject matter jurisdiction. A

1 court is free to determine jurisdiction on a motion to  
2 dismiss for lack of jurisdiction under Rule 12(b)(1)  
3 "unless the jurisdictional issue is inextricable from  
4 the merits of a case." Kingman Reef Atoll Invs.,  
5 L.L.C. v. United States, 541 F.3d 1189, 1195 (9th Cir.  
6 2008) (citing Roberts v. Corrothers, 812 F.2d 1173,  
7 1177 (9th Cir. 1987)). A defendant may challenge a  
8 plaintiff's standing in a motion to dismiss under  
9 F.R.C.P. 12(b)(1) for "lack of subject-matter  
10 jurisdiction." White v. Lee, 227 F.3d 1214, 1242 (9th  
11 Cir. 2000).

12 The standing doctrine eliminates claims that fail  
13 to create a case or controversy. Summers v. Earth  
14 Island Inst., 555 U.S. 488, 493 (2009); Cetacean Cmty.  
15 v. Bush, 386 F.3d 1169, 1174 (9th Cir. 2004). Standing  
16 is a jurisdictional requirement that precedes analysis  
17 of the merits. Krottner v. Starbucks Corp., 628 F.3d  
18 1139, 1141 (9th Cir. 2010). The party seeking to  
19 invoke the jurisdiction of the federal courts has the  
20 burden of alleging specific facts to satisfy the three  
21 elements of constitutional standing. Schmier v. U.S.  
22 Court of Appeals for the Ninth Cir., 279 F.3d 817, 821  
23 (9th Cir. 2002). The plaintiff must establish (1) a  
24 legally recognized injury, (2) caused by the named  
25 defendant that is (3) capable of legal or equitable  
26 redress. Id. "Injury in fact," as required for  
27 federal standing, is an invasion of a legally protected  
28

1 interest which is (a) concrete and particularized, and  
2 (b) actual or imminent, not "conjectural" or  
3 "hypothetical," where "particularized" means simply  
4 that the injury must affect the plaintiff in a personal  
5 and individual way. U.S. Const. Art. 3, § 2, cl. 1.

6 "The party asserting subject matter jurisdiction  
7 has the burden of proving its existence." Hancock v.  
8 Kulana Partners, LLC, 992 F.Supp.2d 1053, 1057 (D. Haw.  
9 2014) (quoting Robinson v. United States, 586 F.3d 683,  
10 685 (9th Cir. 2009)); see also Kokkenen v. Guardian  
11 Life Ins. Co. of America, 511 U.S. 375, 377 (1994).

12 The Court may dismiss a matter for lack of subject  
13 matter jurisdiction if, accepting the plaintiff's  
14 allegations as true and drawing all reasonable  
15 inferences in the plaintiff's favor, the court  
16 determines that the allegations are insufficient to  
17 establish the Court's jurisdiction. Bartholomew v.  
18 Burger King Corp., 21 F.Supp.3d 1089, 1094 (D. Haw.  
19 2014) (citing Pride v. Correa, 719 F.3d 1130, 1133 (9th  
20 Cir. 2013)). Dismissal for lack of subject matter  
21 jurisdiction is appropriate if the claim (1) does not  
22 arise under the Constitution, law, or treaties of the  
23 United States; (2) is not a case or controversy within  
24 the meaning of the Constitution; or (3) is not one  
25 described by any jurisdiction statute. Baker v. Carr,  
26 369 U.S. 186, 198 (1962).

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2. Motion to Dismiss Pursuant to FRCP 12(b)(6) -  
Failure to State a Claim on Which Relief May be  
Granted

Federal Rule of Civil Procedure 12(b)(6) allows a party to move for dismissal of one or more claims if the pleading fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Dismissal can be based on "the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). A complaint "should not be dismissed under Rule 12(b)(6) 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Id. (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In a Rule 12(b)(6) motion to dismiss, a court must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the non-moving party. Klarfeld v. United States, 944 F.2d 583, 585 (9th Cir. 1991).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555



(2007) (internal citation omitted). A complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

## **B. Analysis**

Federal courts have no subject matter jurisdiction to hear a claim against the United States, absent a clear waiver of sovereign immunity. FDIC v. Meyer, 510 U.S. 471, 475 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit."). "A waiver of sovereign immunity cannot be implied but must be unequivocally expressed" in the text of a statute. United States v. Mitchell, 455 U.S. 535, 538 (1980) (citation omitted).

This immunity extends to officials acting in their official capacity. See Daly-Murphy v. Winston, 837 F.2d 348, 355 (9th Cir. 1987). In fact, the District of Hawaii has held that sovereign immunity extends in particular to civil rights cases brought pursuant to Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971), like the present matter.<sup>2</sup> See Jones v.

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<sup>2</sup>The Court discusses the implications of section 1983 suits and Bivens actions interchangeably. The caselaw applicable to a section 1983 action against state actors is equally applicable to a Bivens action against federal actors. The Ninth Circuit has held that actions under section 1983 and Bivens are identical except for the exchange of state and federal actors. See Van Strum v. Lawn, 940 F.2d 406, 409 (9th Cir. 1991).

1 Shinn, No. CV-14-00231-LEK, 2014 WL 3663769 at \*2 (D.  
2 Haw. July 21, 2014) ("Bivens does not authorize suits  
3 against the government or its agencies for monetary  
4 relief.") (citing FDIC v. Meyer, 510 U.S. 471, 486  
5 (1994); Ibrahim v. Dept. of Homeland Sec., 538 F.3d 1250,  
6 1257 (9th Cir. 2008)). Furthermore, many circuit  
7 courts have held that Bivens will not support an action  
8 against federal officials sued in their official  
9 capacity only. See Daly-Murphy, 837 F.2d at 355;  
10 Berger v. Pierce, 933 F.2d 393, 397 (6th Cir. 1991).  
11 Rather, Bivens actions are "against federal officials  
12 individually." Randall v. U.S., 95 F.3d 339, 345 (4th  
13 Cir. 1996). Significantly, a plaintiff cannot have a  
14 valid basis for a claim under section 1983 if the  
15 plaintiff is suing federal officials "acting under  
16 color of federal law." Daly-Murphy, 837 F.2d at 355.

17 Finally, circuit courts have held that sovereign  
18 immunity applies specifically to the U.S. Probation  
19 Office and its agents when those agents are sued in  
20 their official capacities for actions taken under color  
21 of federal law. See e.g. Humphrey v. U.S. Prob. Dep't,  
22 221 F.3d 1334 (6th Cir. 2000) (holding that group of  
23 federal defendants which included the U.S. Probation  
24 Department and probation officials sued in their  
25 official capacities are protected by sovereign  
26 immunity); Fuller-Avent v. U.S. Prob. Office, 226 F.  
27 App'x 1, 4 (D.C. Cir. 2006).

1        This Court finds that to the extent Plaintiff has  
2 asserted constitutional claims against the Probation  
3 Office directly, these claims are foreclosed by FDIC v.  
4 Meyer, 510 U.S. 471, 484-86 (1994) (rejecting extension  
5 of Bivens v. Six Unknown Named Agents of Federal Bureau  
6 of Narcotics, 403 U.S. 388 (1971) to suits against  
7 federal agencies). There is no indication that the  
8 Probation Office expressly waived sovereign immunity,  
9 and thus the Court finds Plaintiff did not state a  
10 viable cause of action against the Probation Office.  
11 Daly-Murphy, 837 F.2d at 355. The Court thus **GRANTS**  
12 Defendants' Motion to Dismiss [42] as to Plaintiff's  
13 claims against the Probation Office.

14        This Court further finds Plaintiff does not state  
15 viable claims against the individual defendants, U.S.  
16 Probation Officers Mata, Skedelski, and Jenkins.  
17 On two occasions, June 24, 2014 and July 3, 2014,  
18 Plaintiff alleges Jenkins told Plaintiff that she would  
19 not give approval for Plaintiff to use marijuana or  
20 Marinol. AC ¶¶ 24-25, ECF No. 38. Plaintiff's claims  
21 against Jenkins arise from this conduct. Although  
22 Plaintiff claims he is suing each defendant  
23 "individually and in [their] official capacity," AC ¶¶  
24 2-5, the Court should find that Jenkins was acting  
25 solely in her official capacity as probation officer  
26 when she allegedly denied Plaintiff access to marijuana  
27 and Marinol. Plaintiff has no valid basis for section

1 1983 claims against Jenkins as Jenkins is a federal  
2 official and was acting under color of federal law when  
3 she committed the acts that gave rise to Plaintiff's  
4 claims. There is no indication that Jenkins waived her  
5 immunity to these section 1983 claims. Accordingly,  
6 this Court **GRANTS** Defendants' Motion to Dismiss [42] as  
7 to Plaintiff's claims against Jenkins.

8 Finally, Plaintiff's AC contains no allegations  
9 about the conduct of Defendant Skedleski or Defendant  
10 Mata, except that during the relevant time period,  
11 Skedleski and Mata were employed, respectively, as  
12 Deputy Chief and Chief U.S. Probation Officers at the  
13 Probation Office. Id. at ¶¶ 3-4. As such, this Court  
14 finds that Plaintiff fails to allege sufficient facts  
15 to adequately state a claim for relief against  
16 Defendants Skedleski and Mata, pursuant to Federal  
17 Rule of Civil Procedure 12(b)(6). This Court **GRANTS**  
18 Defendants' Motion to Dismiss [42] as to Plaintiff's  
19 claims against Skedleski and Mata.

20 The Court **GRANTS** Defendants' Motion in its  
21 entirety, with prejudice, as this Court notes Plaintiff  
22 cannot amend or modify these claims such as to overcome  
23 Defendants' sovereign immunity.

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**III. CONCLUSION**

Based on the foregoing, this Court **GRANTS** Defendants' Motion to Dismiss [42] in its entirety, with prejudice. The clerk shall close this case.

**IT IS SO ORDERED.**

DATED: April 18, 2016

s/ RONALD S.W. LEW

**HONORABLE RONALD S.W. LEW**  
Senior U.S. District Judge,  
sitting by designation